IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 268 of 1991

With

CRIMINAL APPEAL No. 274 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMANLAL CHHOTALAL SANGHAVI - Appellant(s)
Versus
STATE OF GUJARAT \ - Opponent(s)

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Appearance : CR.A.268/1991 :
MR KB ANANDJIWALA for Appellant(s) : 1,
MS DARSHANA PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

Appearance : CR.A.274/1991 :
MR KJ SHETHNA, for Appellant(s) : 1,
MS DARSHANA PANDIT, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 25/04/2007

CAV COMMON JUDGMENT :

1. Both these appeals are under section 374 R/w Section 386 of CrPC challenging the legality and validity of the judgment and order of conviction and sentence passed by ld. Special Judge, Sabarkantha at Himmatnagar in Special Case NO.1/1987 dated 27.03.1991 holding both of them guilty of the offence punishable under section 161 of Indian Penal Code (IPC for short) and also for the offence punishable under section 5(i)(d) R/w section 5(2) of the Prevention of Corruption Act (hereinafter referred to as the Old Act and/or the Act). The quantum of substantive sentence and fine imposed on both the appellants accused are same and they are asked to undergo R/I for 2 years and to pay a fine of Rs.1000/, I/d to undergo further R/I for 6 months for the offence punishable under section 5(i)(d) R/w section 5(2) of the Act and also to undergo R/I for 1 Year and to pay a fine of Rs.500/, I/d to undergo R/I for 3 months for the offence punishable under section 161 of IPC. The ld. Special Judge, of course, ordered that all the substantive sentences to run concurrently.

2. The appellant of Criminal Appeal No.268/1991 is original accused No.2 and the appellant of Criminal Appeal No.274/1991 is the original accused No.1. For the sake of convenience, they are referred to as the accused

No.1, accused No.2 and/or accused considering the context of the reference.

3. Both the appellants accused have challenged the order of conviction and sentence on various grounds stating the gist of the evidence led during the course of trial in para-5 of the memo of the appeal. Mr. Shethna, ld. Sr.Counsel appearing for accused No.1 has mainly argued the appeal and ld. Counsel Mr. Anandjiwala appearing for accused No.2 has accepted the arguments advanced by ld. Sr.Counsel Mr. Shethna and has made certain additional submissions in the background of the nature of the evidence led by the prosecution. They have taken me through the various grounds of challenge and so also the judgment and order of conviction and sentence. Ms. Pandit, ld. APP has also placed before the Court various submissions and has supported the finding recorded by the ld. Trial Judge and has attempted to reply the point of resistance placed by Mr. Shethna and Mr. Anandjiwala for the appellants accused.

4.(i) To appreciate the rival contentions, few facts leading to the prosecution against both the accused need to be stated. Of course, the case of the prosecution is reflected in the charge exh.21. It is the say of the prosecution that the complainant Kodarbhai Madhabhai Patel, resident of village Sherpur, Ta: Idar, District:

Sabarkantha, an agriculturist by profession, made serious grievances against both the accused before the Police Inspector, Anti-Corruption Bureau (ACB for short) at Himmatnagar. According to the complainant, complainant and his brother Dholabhai are the resident of village Sherpur holding agricultural lands in their joint names. However, they are residing separately. Both the brothers i.e. Kodarbhai and Dholabhai are holding 16 acres of land bearing Survey No.274 Hissa No.2 and Survey No.275 Hissa No.2 respectively. Out of this total land, the land admeasuring about 1 ½ acres have been acquired by the government for the purpose of Guhai Dam as the said land is a parcel of land which was to submerge. Notices under the Land Acquisition Act were issued and one of such notices was received by the complainant in the year 1982. Deputy Collector of Dharoi was making payment of compensation and the question of payment of compensation to the complainant and his brother was also pending with him. The complainant was anxious to get the amount of compensation as the land owner and for the purpose, he was required to produce the copy of the village form No.7/12 and also Form No.8-A popularly known as Hakka Patrak. The revenue record as was being kept and maintained by the accused No.1 being Talati-cum-Mantri (Talati for short), those copies were to be obtained from him. Village Talati was also required to identify the agriculturists- real claimants and on his

identification, Deputy Collector was to make payment of compensation amount. It is alleged that the complainant several times requested accused No.1 to expedite the matter, but once when he made request to accused No.1 Talati, accused No.1 asked him to accompany him to Himmatnagar to do the needful for getting compensation. Accused No.1 told complainant that he would accompany him within a day or two. This talk had taken place prior to lodging of the complaint. That on the following next Monday, accused No.1 accompanied the complainant to Himmatnagar with relevant village record. Both of them met one officer in the office of Deputy Collector situated in Ambawadi area of Himmatnagar and that officer was addressed by accused No.1 as Sanghavi Saheb. This Sanghavi Saheb is original accused No.2. He was Deputy Mamlatdar and concerned with the payment of amount of compensation. Accused No.2 inquired from the complainant about his purpose of his visit and in turn accused No.2 was appraised by the complainant that he was to take compensation amount for his acquired land. It emerges from the case of the prosecution that the land of the complainant and his brother was acquired under a voluntary acquisition and under a consensus after publication of the notification under section 4 of the Land Acquisition Act. It is neither the say of the prosecution nor it has come in evidence that any proceedings after publication of notification under

section 6 of the Land Acquisition Act as contemplated under section 9 etc. of the Act has taken place. At that time, accused No.2 told accused No.1 that he has not prepared necessary record and both of them should come once again along with necessary copies. Thereafter, accused No.1 asked the complainant to go out of the room and Talati- accused No.1 after spending some time with accused No.2 came out of the office and told the complainant that the accused No.2 would carry out the work, but for that purpose, his efforts must be considered. It is alleged that as the complainant was anxious to know about the nature of consideration for the efforts that accused No.2 was to make, accused No.1 informed the complainant that accused No.2 must be satisfied. The complainant told accused No.1 that he has no money and in turn he was asked by accused No.1 that no work can be done without money and he should decide by giving appropriate thoughts. Thereafter, both of them separated at Himmatnagar.

(ii) On the next day, the complainant met Talati-accused No.1 and inquired from him as to what accused thought about doing of his work. At that time, accused No.1 Talati told the complainant that on the next day i.e. on Wednesday he is to go to Himmatnagar and complainant should accompany him and they would meet accused No.2 Mr. Sanghavi. Accused No.1 Talati assured the complainant

that he would get things done through accused No.2. On Wednesday, as it was convenient to accused No.1, complainant and accused No.1 went to Himmatnagar. Accused No.1 also informed the complainant that he has brought necessary record also in respect of his land. Thereafter, both of them i.e. complainant and accused No.1 met accused No.2 Mr. Sanghavi in his office. Thereafter, accused NO.2 told accused No.1 and complainant to accompany him outside the office and after they came out, accused No.1 Talati told accused No.2 that Kodarbhai -complainant has come and now what is to be done. At that time, accused No.2 told that he has to carry out the work of the complainant and he shall do it and for that work, Rs.500/ should be paid to him and he would make immediate arrangements for the cheque. On this disclosure by accused no.2, accused No.1 inquired from the complainant as to how much amount the complainant has brought. The complainant replied that he has not brought that much amount and if the cheque is given, he would give money on its encashment. Accused No.2 at that time told the complainant that his work can be done only if he pays the amount in advance. He also said that there are several number of persons who have taken away the cheques and have not returned to pay the amount as agreed. These persons had gone directly and had not paid money to accused No.2. So, accused No.2 told complainant to make arrangements for money if he can do so from the Bazar.

Complainant told accused No.1 that nobody knows him in Himmatnagar town and it will not be possible for him to collect the money from Bazar. On this discussion, accused No.2 went inside the office and while going inside, told the complainant to come only after arrangement of money is made. The complainant asked accused No.1 as to what now should be done and accused No.1 told complainant that he must arrange for Rs.500/ to b paid to accused No.2 Mr. Sanghavi and Rs.100/ to be paid to him. According to accused No.1, he should be paid Rs.100/ as remuneration for accompanying him and for identification of the complainant and for supplying copies of revenue record. Accused No.1 told the complainant that this amount of Rs.600/ should be paid to him and only then he would accompany the complainant for the purpose of identification. At that time, the complainant told accused No.1 that whenever the amount is arranged, he will inform accused No.1. On next Friday, the complainant met accused No.1 and requested him to accompany him to Himmatnagar. However, accused No.1 Talati told him that the case of the land of High School was going on and, therefore, it was not possible for him to accompany him for going to Himmatnagar, but assured that they would go to Himmatnagar on Monday and also reminded the complainant to bring Rs.600/. He also told the complainant that unless full amount is brought, he would not come to Himmatnagar as it would be fruitless. Accused

No.1 was also requested whether the amount could be reduced, but accused No.1 was not agreeable and repeated once again that the full amount should be brought and only then he would accompany him to Himmatnagar and would identify him.

(iii) Considering the insistence of accused No.1 and demand made by accused No.2 for Rs.500/, the complainant decided to lodge a complaint and went to the office of ACB at Himmatnagar and informed PI Mr. Parmar that he is not inclined to make any payment as bribe either to accused No.1 Talati or to accused No.2 Mr. Sanghavi. He also informed Mr. Parmar that Talati has promised him to accompany him to Himmatnagar for getting his work done between 12.00 noon & 2.00 p.m. After listening the complainant, PI Mr. Parmar recorded the formal complaint of the complainant Kodarbhai on 21.04.1985. On 22.04.1985, at about 1.15 p.m., the complainant went once again to ACB Office and informed PI of ACB that Talati had postponed to accompany him to Himmatnagar as there was a case of land of the High School and several persons were to come and gather there in the village and accused No.1 Talati has promised him to accompany him on the next day and accused No.1 had also instructed him to bring money. Police Inspector of ACB instructed the complainant and also complainant told PI of ACB that when he comes on the next day with accused, he would immediately inform

him. PI of ACB reduced this in writing in the nature of complaint and asked the complainant to come on the next day along with the money proposed to be paid as bribe. Regular PI of ACB at Himmatnagar was one Mr. Gadhavi who was on leave, but as Mr. Gadhavi was on leave, PI Mr. Parmar of ACB, Mehsana was placed in charge of ACB Police Station at Himmatnagar and Mr. Parmar, therefore, has recorded the complaint.

(iv) On 23.04.1985, it is alleged that accused No.1 demanded bribe of Rs.600/ from complainant Kodarbhai i.e. Rs.100/ for him and Rs.500/ for accused No.2 Deputy Mamlatadar Mr. Sanghavi and they obtained the amount of Rs.600/- as illegal gratification. When the amount was obtained, a trap was arranged by PI Mr. Parmar and a formal first part of panchanama was drawn in presence of two panchas, one of them was Mr. Laxmanbhai Mohanbhai Kotwal and another one was Mr. Rakesh Sutaria, both of them are government servants serving in Public Works Department (popularly known as PWD). All the formalities of applying anthracene powder etc. were carried out in presence of panchas as described in first part of panchanama. It is alleged that the complainant with panch No.1 went to the office of accused No.2. Some members of raiding party scattered themselves in the office, Panch Mr. Kotwal took his seat in such a manner that he can visualize the transaction/transfer of bribe money and can

listen the conversation. It is alleged that the complainant told Mr. Sanghavi that he and accused No.1 have come, accused No.1 has brought copy of the village form and now their work should be done. At that time, accused No.2 told accused No.1 that first his work should be finished. At that time, accused No.1 asked the complainant to give him money and told the complainant not to worry for his work. Thereupon, the complainant took out currency notes stained with anthracene powder from his pocket and gave it to accused No.1 Talati. Accused No.1 counted currency notes and out of six notes of Rs.100/ denomination, kept one for himself and other notes were offered to accused No.2 – Deputy Mamlatdar Mr. Sanghavi. Accused No.2 Mr. Sanghavi told the complainant to keep the notes with him for the time being. Accused No.1 thereafter again bundled up the notes and kept them in his hands. In the mean time, the complainant came out and gave a signal as per instructions and raiding party rushed inside the room and both the accused were caught. It is alleged that at the time of actual raid, the amount of bribe was found from the hands of accused No.1. The hands of accused No.1 were also found stained with anthracene powder marks when hands were examined under Ultra Violate lamp. The personal bag known as “Theli” of accused No.1 was searched and ACB Inspector in presence of panchas found revenue record and blank forms for preparing copies. In presence of panchas, 2nd part of

panchanama thereafter was drawn and accused were intercepted. Thus, according to the prosecution, both the accused have committed above-said offences.

5. The points placed before the Court, if are mentioned in nutshell, they are as under:-

(i) The case of the prosecution is highly improbable as it was not possible for accused No.2 to arrange for money and for issuance of a cheque and for this purpose, the amount of total compensation also should be considered.

(ii) The conduct of the complainant makes him unreliable and it emerges that under total frustration, he arranged trap as his idea was to get the amount of compensation from the government otherwise the same was to go to Land Mortgage Bank as the complainant was the debtor of the Bank. The Bank had already served with him a notice to pay up the debts and deputy Collector was under obligation to tender entire amount of compensation directly to the Bank. The complainant was in a mood to get out of that contingency and with a view to put pressure, he implicated both the accused falsely. The opportunity to trap both the accused was created by the complainant and ACB PI Mr. Parmar has used the

anxiety of the complainant in making out the case so that he can get a feather in his cap for carrying out a successful trap even when he was simply a PI in charge of ACB, Himmatnagar Police Station.

(iii) Weekly diary and case diary of Mr. Parmar were not brought before the Court otherwise it could have been successfully pointed out that the trap in the present case is a created trap and the same is not based on a genuine complaint.

(iv) The substratum of the story of the prosecution is absurd and highly improbable because no formal possession of the land of the complainant was taken. The land of the complainant is situated on the periphery of the dam and so till the date of taking over the actual possession, there was no scope of paying any amount of compensation and, therefore, the prosecution case should not be believed. The evidence of traveling in a car for some distance brought on record by the prosecution is highly unreliable. Neither the owner of the car nor the driver of the car has been examined and this part of the story brought by the prosecution on record makes the case of the prosecution unreliable.

(v) Panch No.1 examined by the prosecution was not

there with the complainant though he was asked to remain with the complainant. He had occupied a chair which was at a reasonable good distance and it is not possible to believe that he could see the physical gestures or listen the conversation between the complainant on one side and accused Nos. 1 & 2 on the other.

(vi) The absence of nil panchanama on 22.04.1985 makes the prosecution case more doubtful. Why PI Mr. Parmar has selected the panchas from one and some department and especially when PWD is known defamed department? At least, one panch ought to have been selected from some other department.

(vii) Ratio laid down in the case of **Gulam Mahmood A.Malek v/s State of Gujarat, AIR 1980 SC 1558** should be considered because the background of the case of the prosecution has to be seen and background in the present case does not support the version either of the complainant or of a panch No.1.

(viii) The integrated story should be seen and the Court can not dissect one part of the basic story of the case of the prosecution. The demand of Rs.500/ + Rs.100/ and conversation in this regard that has allegedly taken place does not get

sufficient corroboration. When the division of the total amount of bribe has not been told specifically, the story of the prosecution should not have been believed by the ld. Trial Judge.

(ix) The Court has ignored one set of evidence supported by the document i.e. evidence as to bank debt of the complainant and his brother and the relevant law under which the Deputy Collector was supposed to pay the amount of compensation directly to the Bank. The amount which was to be paid to the Bank was insisted upon the complainant and the ld. Trial Judge has failed in appreciating this part of evidence so also the evidence of Deputy Collector Mr. Gurjar examined. There was no reason for the Court to discard the evidence of Mr. Gurjar wherein he has stated that the complainant was not otherwise entitled to compensation as formal possession of his land was not taken.

(x) At the most, the evidence establishes one fact that at the time of raid, muddamal currency notes were with accused No.1 Talati, but mere acceptance or mere recovery is no proof of acceptance of bribe and prosecution is supposed to prove that the amount accepted or recovered was bribe amount and the same has been accepted under some agreement or understanding.

6. The above points of submissions have been adopted by ld. Counsel Mr. Anandjiwala for accused No.2. But here it is necessary to mention that further more points have been advanced by ld. Counsel Mr. Anandjiwala i.e. Deputy Mamlatdar Mr. Sanghavi and if these points are mentioned in nutshell, they are in reference to the fact drawing line of difference between the case of the prosecution against accused No.1 and accused No.2 Deputy Mamlatdar Mr. Sanghavi. It is argued that:-

(i) There is no consistency nor enough strength in the evidence as to meeting of the complainant with accused NO.2 when the complainant was accompanied by accused No.1 on the first occasion. As this part of evidence is weak, accused No.2 ought not to have been linked with the demand of the bribe amount.

(ii) The ld. Trial Judge has ignored the material contradictions and improvements made by the prosecution witnesses namely the complainant on the point of first meeting and the ld. Trial Judge ought to have observed that there is no legal and satisfactory evidence on the point of such first meeting that had taken place in the office of accused No.2.

(iii) 21st April, 1985 was Sunday and there was

no scope for conversation between accused No.1 and the complainant as the place of posting of PI Mr. Takahatsingh Mulubha Parmar i.e. PW 3 PI Mr. Parmar was at Mehsana and there was no reason for him to be there in the office of PI, ACB at Himmatnagar. This clearly indicates that PI Mr. Parmar must have some indication that the complainant is going to come to the office of PI, ACB at Himmatnagar, otherwise Mr. Parmar could have explained as to why he was present in the office of PI, ACB at Himmatnagar even on Sunday.

(iv) The alleged demand of bribe amount has not been made by accused No.2. The case of the prosecution is that initially the demand was made by accused No.1. No reason for deciding the figure of bribe amount of Rs.600/ has been given by the complainant otherwise it would have been reflected in the complaint. The ld. Trial Judge ought to have seen the sequence of events that had occurred prior to filing of the complaint and the version in the complaint. This makes the evidence of the complainant weak and doubtful.

(v) There is no evidence about when demand was made. Accused No.2 probably was not to get anything and there is no evidence about conversation of convincing nature available on the day of trap and

so also in the office of accused NO.2 prior to the filing of the complaint and it would be risky for the Court to accept the version of the complainant without any corroboration. The material contents of the complaint exh.39 have not been proved by the complainant during his deposition. So, that part of the complaint ought not to have been read by the ld. Trial Judge while assigning the reasons. Only the legal and admissible evidence can be read and considered and, therefore, the judgment can be said to be erroneous based on improper and illegal appreciation of evidence.

(vi) That the money was to be paid to accused No.1. Accused No.1 had not instructed the complainant to approach accused No.2. The first part of panchanama requires to be read in correct perspective and there is nothing on record or in first part of the panchanama to show that the accused No.1 is going to accept the amount on behalf of accused No.2.

(vii) The demand was made immediately prior to its acceptance and transfer of bribe money from the complainant to accused on 23.04.1985 and in this regard, the prosecution ought to have led evidence with clarity. On the contrary, it emerges that though panch No.1 was instructed to act as a shadow

of the complainant, he was not present actually nearby the complainant and he had occupied a chair at a distance and that too in other room in the office.

(viii) There is no map of the office of accused No.2 produced. The IO ought to have shown the distance between the chair that was allegedly occupied by panch No.1 and the table of accused No.2. This lacuna makes the prosecution case doubtful on the point that panch No.1 had over-heard the talk between accused NO.2 and complainant or accused No.2 & accused No.1 in presence of complainant immediately prior to the transfer of muddamal currency notes. It also affects the claim of the prosecution that panch No.1 had seen the transaction (page No.201 of the paper book).

(ix) The exaggeration made by the complainant in his deposition does not get support from the panch witnesses. On the contrary, the evidence indicates that panchanama was not dictated by the panch. One writer namely Jagatsingh has written the panchanama. This Jagatsingh though was a member of the raiding party, has not been examined. It appears that Police Inspector has dictated the panchanama as per his convenience and not as per the say of the panch.

(x) The trap officer is also the Investigating Officer. When it is clear that the complainant Kodarbhai had no capacity to dictate the panchanama and the panchanama is in the handwriting of Jagatsingh, the panchanama ought not to have been treated as a relevant piece of evidence.

7. While developing the above points, ld. Counsel Mr. Anandjiwala for accused No.2 has submitted that there was no possibility of making any payment as there was no grant. Therefore, there was no reason for accused No.2 to assure the complainant that his demand would be satisfied. Even no formal possession of the land was taken from the complainant. The prosecution ought to have led satisfactory documentary evidence including the notifications published under sections 4 & 6 of the Land Acquisition Act (LA Act for short) and the date of taking over possession of the land in question. As such, there was no award on the date of the trap under section 11 of the LA Act and so the question of payment was not there. If it was a consent award, then the prosecution ought to have produced those documents. So, there is inconsistency in the case of the prosecution and when it emerges that the prosecution intends to rely on two inconsistent facts, the version of the prosecution should not be accepted. Mr. Anandjiwala has placed reliance on

one decision of the Apex Court in the case of **Suraj Mal v/s The State (Delhi Administration), AIR 1979 SC 1408,** wherein the Apex Court has observed that:-

> " .....In other words, the position was that while P.Ws.6, 8 and 9 were disbelieved both in regard to the factum of payment of the bribe and the recovery of the money, regarding Ram Narain, the very same witnesses were believed so far as the appellant was concerned. It is well settled that where witnesses make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. ...." (relevant part of para-2 of the judgment).

8(i) Ld. APP Ms. Pandit has strongly resisted the submissions made by the ld. Counsel appearing for both the accused. According to her, the finding of guilt recorded by the ld. Trial Judge should be upheld. She has pointed out the reasons assigned which are there in para 17 of the judgment (page Nos. 451 to 453 of the paper book). According to Ms. Pandit, there is no conflict in the evidence as to the conduct of the accused and presence of both the accused at the place where the trap

was arranged and muddamal currency notes were given to accused No.1. It is satisfactorily established by the prosecution that out of Rs.600/, Rs.500/ were for accused No.2. The entire amount was handed over/ given to accused No.1 in presence and within the knowledge of accused No.2. If he was really an innocent, he ought not to have tolerated illegal transaction and transfer of muddamal currency notes in his office and that too in his name. In the present case, it is not even possible to observe that the complainant is an accomplice because the accused persons had decided to extort money placing compelling reasons before the complainant. The ld. Trial Judge was supposed to see and appreciate totality and minor contradictions or exaggerations found in the deposition of the complainant are not sufficient for discarding the entire case of the prosecution. Deputy Collector Mr. Gurjar- PW.4 has tried to help the accused persons. According to PW.4 Mr. Gurjar, no award was passed and the award given to the IO was a draft award, but the ld. Trial Judge has ignored this evidence. On the contrary, it is clear from the documents that it was an award and IO has demanded copy of the award and the same was given to the IO as award in Land Acq. Case otherwise, the IO could have been replied that as there is no formal award passed in land acquisition proceedings, copy thereof could not be given or this very witness ought to have clarified at the time of handing over the award that the

same is a draft award and nobody could have acted on it. On the contrary, the evidence of Mr. Gurjar exposes the accused persons.

(ii) According to Ms. Pandit, the award was prepared and signed on 04.04.1984. Even if it was signed in the year 1986, it would not have made much difference. ON both the counts, the accused were interested in extorting money and/or obtaining illegal gratification. It is in evidence of the complainant that he was told that accused No.2 shall have to be pleased. It is not a matter of dispute that accused No.2 was a key person in the office of the Deputy Collector so far as the payment of amount of compensation in respect of the lands acquired is concerned. The evidence of panch is also clear and he has also narrated how and where he had occupied the chair and was able to hear and see the entire transaction. There was no reason, according to Ms. Pandit, to talk about handing over of cheque after 8 days if there was no grant.

(iii) It is argued by Ms. Pandit that there is sufficient evidence on record to show that muddamal currency notes were recovered from accused No.1. Panch witness and complainant both are found inconsistent so far as the recovery of muddamal currency notes are concerned. The version of these two witnesses gets sufficient corroboration from panchanama (exh.45). Even

the Investigating Officer has stated that on getting signal, raid was carried out by him and muddamal currency notes were recovered from accused No.1. It is true that accused No.2 has not accepted the muddamal currency notes though given to him, but it is not the case of the prosecution from the beginning that accused No.2 had accepted the amount. There was no reason for accused No.1 to go to Himmatanagar and that too in the office of accused No.2 with the complainant on the day of trap. It is not suggested to any of the prosecution witnesses nor it is the say of the accused in their statements under section 313 of CrPC that he had gone to the office of accused No.2 for some other official work. Recovery of certain documents including revenue record of the village, corroborates the say of the complainant and purpose of visit of accused No.2 by accused No.1 in the company of the complainant.

(iv) According to Ms. Pandit, it would not be legal or proper to say that there is no evidence against accused No.2. It is submitted that he was the person concerned for making payment or at least to hand over the cheque to the farmers whose lands were acquired. The conduct of accused No.2 proves beyond doubt an element of hidden demand of illegal gratification by him. The documents produced were seized at the time of trap. Copies of village form No.7/12 were to be prepared and collected by

accused No.2. Medical Certificate produced at exh.59 is found fishy. On the contrary, it emerges that merely a doctor was contacted to obtain a certificate exh.59 and this could have been obtained even after the raid, otherwise considering the nature of alleged ailment of the son of accused No.1, he could have approached concerned Physician or General Practitioner and could not have approached Dr. Sikender, who is Specialist in Skin, leprosy & Sexually Transmitted Disease especially when the ailment of son of accused No.1 is cold & respiratory disturbance. The falsity of defence is also a relevant fact and the Court can consider as a circumstance against the accused while evaluating the case of the prosecution and the ld. Trial Judge, before accepting the case of the prosecution, has considered various aspects including the conduct of the accused, cause for asking bribe, presence of panch No.1 in the vicinity where the trap was arranged, the evidence describing the sitting arrangement and the fact of recovery of muddamal currency notes from accused No.1 in presence of accused No.2 at Himmatnagar in the office of accused No.2. It is argued that merely because the complainant is either illiterate or rustic villager, his evidence should not be discarded. In the same way, merely because the panchas selected by PI, ACB are not capable of dictating each word of the panchanama, the entire panchanama should not be viewed with doubt. It is true that while making second attempt,

PI Mr. Parmar could have called some other person as panch, but as such in the present case, there was no failure of trap at all, but because of non-availability of accused No.1, the trap could not be arranged on the day on which it was laid initially. Ms. Pandit has taken this Court through para-20 of the judgment under challenge and the criticism made by the ld. Trial Judge of PW.4 Dy.Collector and his explanation which is there in the said para. Role of accused No.2 has been discussed by ld. Trial Judge in para-21 of the judgment and the same is based on sound reasons.

(v) According to Ms. Pandit, this is a case where presumption under section 4 of the Evidence Act was required to be raised and the same is found raised properly by the ld. Trial Judge. The accused persons and mainly accused No.1 was supposed to rebut this presumption by proper explanation or by leading convincing evidence as the amount was recovered from him. It is submitted that for raising presumption, it is not necessary that the amount must be physically lying with the person accused. The prosecution is supposed to prove the demand of bribe and its acceptance by legal and convincing evidence. The prosecution also should prove that the acceptance of bribe amount/ muddamal currency notes was under an agreement or understanding between the complainant and the accused. This would be sufficient to

raise the presumption. So, it would not be proper to say that no presumption could have been raised against accused No.2 as his hands were not found stained with anthracene powder. Each imagination placed by the lawyer should not be accepted and the ld. Trial Judge , therefore, has dealt with the arguments advanced by the other side during the discussion in paras 23 & 24 of the judgment. Zerox copy of the National Savings Certificate (NSC for short) produced supports the case of the prosecution more than the explanation given by accused No.1 as to his presence at Himmatnagar. On the contrary, the production of copy of NSC corroborates the story of the complainant whereby he has described as to how all of them had started from village of the complainant and after reaching Himmatnagar, who dropped where and how entire team reached the office of accused No.2. The description given by the complainant of leaving the company of accused No.1 tactfully makes the version of this witness more natural because he was supposed to inform the PI Mr. Parmar that it is now possible to lay the trap today at the earliest. No suggestion was made to the complainant that when they started from village, son of accused No.1 was sick and accused No.1 was taking his son to the doctor first.

For short, according to Ms. Pandit, the judgment under challenge being legal and proper,

the same should be upheld and both the appeals should be dismissed.

9. While evaluating the judgment and order of conviction under challenge, the Court initially has to consider the finding recorded by the ld. Trial Judge and the reasons assigned for recording the ultimate conclusion. It is the experience of the Court that normally the major portion of the judgment is found covered with the narration of the depositions of the witnesses examined and some times mere translation of the depositions is found irrespective of the importance or relevance in drawing a conclusion in the background of the charge framed and if any specific defence plea is taken. In the present case, ld. Trial Judge has attempted to avoid mechanical reproduction of the depositions of the witnesses examined. I have been taken through the judgment and mainly the reasoning part of the judgment by ld. APP Ms. Pandit. In light of the suggestions made by the witnesses examined by the prosecution during the course of their cross-examination and the explanation given by both the accused, it is possible to observe that as such there is no serious dispute about the status of the accused and so also the sanction accorded to prosecute both the accused persons. This part of the case of the prosecution was not even seriously challenged before the trial Court. No submissions have been made

even before this Court on this count.

10. It is necessary to mention certain facts that have emerged either as admitted facts or undisputed facts or facts which can be placed in the category of facts not under serious challenge. It is true that the accused is not supposed to challenge all facts placed by the prosecution and it is the duty of the prosecution to prove the case beyond doubt. But while showing the strength in the case, the prosecution is entitled to argue that out of certain set of facts brought on record while dealing with the evidence, a particular set of facts has not been challenged by the defence side. It is not a matter of dispute that PW 1 Kodarbhai is an agriculturist and was holding agricultural land jointly with his brother Dholabhai in the sim of village Sherpur of Taluka Idar. Shri Dholabhai is elder brother of complainant PW 1 Kodarbhai. They were having agricultural land admeasuring about 16 Acres out of which a small piece of land i.e. of Hissa No.2 of survey No.274 and Hissa No.2 of survey No.275 admeasuring about 1 ½ Acres of land was acquired by the government of Gujarat for the purpose of Guhai Dam Irrigation Scheme. This portion of the land was likely to submerge and, therefore, it was acquired. All the formalities qua acquisition of the land was completed by Deputy Collector, Dharoi and office of the Deputy Collector,

Dharoi was making payment of compensation to the farmers- land-loosers. It is disputed that the award under section 11 of the LA Act was made by the Land Acq.Officer, but the copy exh.28 produced reveals that the farmers whose names shown in schedule:G attached with the award were to be paid compensation. Only the factum of proclamation of the award was disputed by the accused and they have placed reliance on the evidence of PW.4 Mr. Gurjar (exh.53) for the purpose. But the contents of the award exh.28 have not been disputed and it is not a matter of dispute that the award exh.28 is an award in reference to the farmers who had declared their intention to accept the amount of compensation in accordance with consent terms and Kabulatnama were also taken. Except six farmers of village Rajpur, Kabulatnama of other farmers were not qualified (para-8 of the award exh.28). The amount of compensation payable to the complainant and his brother is shown as Rs.6501.59 ps. Deputy Collector (Land Acquisition & Rehabilitation), Dharoi Yojana being Land Acq. Officer, had signed the award on 04.04.1984. However, one more date is also seen i.e. 30.12.1984. Schedule:G was signed on 04.04.1984. Village Sherpur has been referred to as village Rajpur in the award. So, the complainant was in the category of the person who had given Kabulatnama and there was no scope to approach the higher forum by placing reference under section 18 of the LA Act. It is not the case of the prosecution that there

was any dispute between the complainant and his brother Dholabhai and, therefore the payment was to be withheld. The defence is that the complainant was a debtor of Gujarat State Co.Op.Land Development Bank. It is not a matter of dispute that entire chunk of land was mortgaged with the Bank and Special Recovery Officer had issued notice to pay the arrears. On 15.12.1982, the complainant and his brother were called by the Special Recovery Officer of the Bank and the amount demanded was Rs.6343.00. The case of the prosecution requires to be evaluated in the background of the fact that the amount of debt was even less than Rs.10,000/ and the complainant as well as his brother were owning and occupying the land admeasuring about 16 Acres of land. The fact that the complainant and his brother were holding 16 Acres of land is not disputed and the land acquired for Guhai Dam Irrigation Scheme was only 1 ½ Acres of land. It is also not a matter of dispute that the person who is being paid from or on behalf of the government requires to be identified by a responsible person and the Talati viz. accused No.1 as Revenue Officer, was competent to identify the real claimants. It is not disputed that accused No.1 was village secretary of village Sherpur (Rajpur). It is the practice adopted normally by the State of Gujarat that all farmers if they are more in number, they are being paid in their respective villages if they have consented for acquisition of land and amount

of compensation is determined by a consensus. It is true that there is no evidence on record as to such policy and the Court can not consider anything which can be said to be extraneous, but it has emerged from the record that on the day of trap, the complainant and his brother were entitled to the compensation and the amount of compensation was not paid to them even in part in past and the office of accused No.2 is the office from where the disbursement of the amount of compensation was to be made. The deposition of PW.4 is clear on the point that his office and his subordinates were concerned with acquisition of the land for Guhai Dam Irrigation Scheme, the award has been made by him and payment was also to be made by him. The facts reveal that the amount of compensation payable to the complainant and his brother was paid directly to the Bank as per the policy meaning thereby it is clear that the office of accused No.2 was directly concerned in making the payment of compensation to the farmers including the complainant.

11. Initially, the prosecution had decided to drop PW.4 Mr. Gurjar-Deputy Collector and one another witness namely PI Mr. JJ Gadhavi and this action was objected by the defence side by filing an application and it was prayed that the documents mentioned in para-5 of the application exh.49 submitted on behalf of the accused persons may be exhibited and all these documents should

be produced and admitted in evidence. Detailed reply was filed by the prosecution to this application exh.49 and the same is at exh.50. However, in view of the order passed by the Court asking the ld. PP Mr. Malik to reconsider his decision of not to examine those two witnesses, PW.4 Mr. Gurjar therefore only came to be examined after the recording of the evidence of IO Mr. Parmar. The evidence of PW.4 Mr. Gurjar, therefore, has been commented by the ld. Trial Judge with caution. However, in the deposition of this witness, it has come on record that accused NO.2- Deputy Mamlatdar was given responsibility of land acquisition cases and the cases of land acquisition of village Sherpur were in charge of accused No.2. So, it was not possible for the trial Judge to say that accused No.2 had nothing to do with the cases of Sherpur village and to pay the amount of compensation as there was no formal award nor the grant to pay the amount of compensation to the farmers. On the contrary, the act of sending money of compensation of the land of the complainant and his brother to Land Mortgage Bank appears to be a conduct subsequent to the date of trap probably with a view to help the accused. In the cross-examination, PW.4 Mr. Gurjar has tried to pose the award exh.28 as draft award and to substantiate this version, he had given certain answers which apparently look like the answers given with a view to help the accused persons. But on close reading of the oral evidence of

this witness, on the contrary, it helps the prosecution indirectly because it cuts the defence plea. It is true that the prosecution case should succeed on its own strength and weakness of the defence side can not be used by the Court while drawing the finding of guilt, but the falsity of defence or inherent defect found in the defence plea takes shape of a circumstance then that circumstance can be made use of by the prosecution and the Court can also consider that circumstance while evaluating the totality of the case placed. It is the say of the accused that there was no scope of making any payment of Rs.6501.59 ps. To the complainant as (i) there was no award, (ii) there was no grant, and (iii) the amount otherwise was to be sent to Land Mortgage Bank. Notices of Land Mortgage Bank were served to the complainant way back in the year 1982-83 and there was no reason for this officer to have a personal knowledge about the non-payment of the amount claimed by the Bank because the amount was not that big. Only Rs.6433.00 were to be paid. The date of award exh.28 is April, 1984. This amount was allegedly sent to the Land Mortgage Bank after September,1986. So, the subsequent act of the department wherein both the accused were serving would not affect the case of the prosecution. It is the experience of the Courts as well as of the society at large that normally, unless certain exceptional circumstances exist, the department would try to defend its employees to the

maximum. If it was the say of PW.4 Mr. Gurjar that award of village Sherpur was declared on 20.09.1986, then there was no reason for this witness to keep these documents behind curtain. He ought to have brought those documents with him and tendered them in evidence. When best evidence was available with this witness, then bare words of this witness why should be accepted as gospel truth is also a question. Surprisingly, the figure of the amount of compensation stated by this witness is similar to the amount mentioned in the award exh.28. Exh.54, a letter addressed to PI, ACB, Himmatnagar dated 03.02.1986 produced in evidence by the witness during the cross-examination, appears to be a letter written by this very witness or his successor in office and in support of the letter exh.54, one another document is tendered as exh.54/1. An attempt is made to establish that there was no award nor there was any scope of paying any amount of compensation to the complainant and the basic story of the prosecution can be taken under a great shape of doubt. Sanction to prosecute exh.43 has been received in evidence on admission which was produced along with list exh.41. The date of sanction is 19.11.1986. If the stand of the department was as per the contents of the letter exh.54, then the authority would not have accorded the sanction at least to prosecute accused No.2. Validity and legality of the sanction was not challenged before the trial Court and the same has not been assailed before

this Court. Deputy Collector has referred one document in the letter exh.54 which is the document exh.54/1. If exh.54/1 is read, it is clear that the case is in reference to the lands which were required to be acquired for Guhai Irrigation Scheme and the process of publication of notifications under sections 4 & 6 of the LA Act was going on. Mark 54/1 letter is dated 06.12.1985. Meaning thereby that the guidance was sought for and the same was given in reference to the lands which were yet to be acquired and, therefore, Deputy Collector was advised that he should continue with routine procedure of publication of sections 4 & 6 Notifications. Language of the letter is also not directory and the same is advisory in nature. So, the contents of the letter exh.54 and exh.54/1 are found irrelevant and, therefore, not helpful to the accused at all because so far as the land of the complainant is concerned, it was already acquired and section 4 notification was already published on 27.05.1982. Process under section 5-A of the LA Act was also completed and the satisfaction of the Land Acquisition Officer was recorded. Notification under section 6 of the LA Act was published on 21.09.1983. Exh.28 clearly reveals that farmers named in the award have shown their willingness in the process of acquisition and have entered into an agreement popularly known as “Kabulatnama” and the award is under sub-section (2) of section 11 of the LA Act and,

therefore, the government was under obligation to pay the amount on the date of award. It is not necessary for this Court to refer the scheme of sections 4, 5A, 6, 9 & 11 of the LA Act and at least the accused persons were in better know off the legal as well as factual situation than the illiterate claimants. No formal approval was even required from the government in making award under sub-section 2 of section 11 of the LA Act. Sub-section 2 of section 11 of the LA Act as applicable in the State of Gujarat, provides thus:-

> "11. Enquiry and award by Collector.-
>
> (1) xxxx xxxx xxxx xxxx
>
> (2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appear before him are agreeable to the award which he proposes to make under this section the Collector may without making further enquiry, require such person to execute an agreement.
>
> (3) xxxx xxxx xxxx xxxx
>
> (4) xxxx xxxx xxxx xxxx

Preamble of the award exh.28, if read, the deposition of PW.4 Mr. Gurjar is not found helpful to the accused. On the contrary, one important incriminating circumstance has come on record that accused No.2 was the person authorized to deal with the land acquisition cases

of village Sherpur.

12. Both the accused were jointly defended and when certain facts have come on record which have not only proved the evidence led by the prosecution witnesses and documents tendered in evidence by the prosecution, but also proved certain admissions made by the accused persons and in such a fact situation, those facts should be given a particular treatment and/or weightage at the time of evaluating the evidence of each concerned witness and/or considering the case of the prosecution. The case of both the accused is of denial so far as the events that had occurred at the table of accused No.2 on 23.04.1985. It is the say of the accused that anxious complainant had tried to give the muddamal currency notes initially to accused No.2 and the accused No.2 refused to accept the same and thereafter, as accused No.1 was sitting on the chair near the table of accused No.2, the complainant tried to put the muddamal currency notes in the hands of accused No.1. Accused No.1 also tried to push off the hands of the complainant, however, he had handed over the bundle of muddamal currency notes to accused No.1 and accused No.1 threw away those notes and, therefore, the currency notes had fallen on earth. The say of accused No.2 is that when complainant tried to give bundle of muddamal currency notes to him, he had not paid any heed to the said gesture and at that time,

the notes were tried to be put in the hands of accused No.1, but accused No.1 pushed the hands of the complainant with his both hands and, therefore, the notes had fallen on earth. Therefore, the presence of accused Nos. 1 & 2 and the complainant at the spot is not disputed. It is the case of the prosecution that after initial part of panchanama drawn on 23.04.1985, panch No.1 was all the while with the complainant and he was sitting outside a lodge (dining hall) where the complainant, accused No.1 and his wife took lunch and thereafter panch No.1 was following the complainant and accused No.1. The explanation given by accused No.1 is not at all found probable that meeting of accused No.1 with complainant Kodarbhai was totally an incidental and accused No.1 had seen the complainant for the first time on 23.04.1985 when he came out of the post office and when accused No.1 asked his wife about taking lunch, complainant had also said that he would like to have a lunch. After some walk, accused No.1 and his wife were given lift in a motor car and they had been to a lodge (dining hall). Now, unless the complainant is sure about the place where accused No.1 and his wife were to take their lunch, there was no scope for complainant Kodarbhai to reach that spot and/or other probability is that complainant Kodarbhai is informed or asked to come at that place. In the background of the stand taken by accused No.1, the evidence of panch and complainant was

to be evaluated and, therefore, the ld. Trial Judge has observed that there is enough strength in the version of these two witnesses that the complainant had left the village with his brother, accused No.1, his wife and a minor child of accused No.1 and accused No.1 was to be dropped near the post office as he had some work there. So, everybody had got down from the bus near the post office and the complainant had gone inside the post office. At that time, the complainant conveniently separated him from his brother and wife of the accused No.1 and went to the police station. PI Mr. Parmar was already intimated on previous date because the trap was to be arranged otherwise on 22nd April. Panchas were also called on 22nd April, but no formality of drawing initial part of panchanama was required to be completed as accused No.1 was not in a position to come to Himmatnagar. One panch who was called on 22nd April was not again called on 23rd April. The evidence which is at page 189 of the paper book clearly indicates that initially one Mr. Pander was called on 22nd April, but as he was not available, the panch examined in the present case was asked to go to ACB police station. The complainant and panch No.1 both have stated consistently that after taking meals, all of them have proceeded towards the office of accused No.2 and wife of accused No.1 had separated. Sufficient reasons have been given by the ld. Trial Judge for not accepting the certificate of

Dr. Sikander. However, one more fact situation should not be lost sight of that the wife of accused No.1 may have taken the minor child to a doctor or minor may not have been taken to any doctor including Dr. Sikender as alleged. So, the entry of accused No.1 with Kodarbhai in the office of accused No.2 has been satisfactorily proved by the prosecution. The explanation of accused No.1 as to how both of them were near the table of accused No.2 is not at all found probable. There was no reason for the complainant to go to Himmatnagar nor it was possible for him to state that a person i.e. accused No.1 going to Himmatnagar with his wife and a minor child would go in the office of the officer who is otherwise dealing with land acquisition cases. Mostly, the village secretaries have to pay their visits to the office of Revenue Mamlatdar or Collectorate or the office of Taluka or District Panchayat. The presence of accused No.1 is only required in the office of accused No.2 when he is asked or requested to accompany a farmer so as to identify him before handing over the cheque of the amount of compensation. It is an accepted position in the present case that normally the amount of compensation is being paid to the farmers at their village and in the present case, no such attempt was made and, therefore, the complainant perhaps was anxious to get the amount at the earliest so that he can meet with immediate needs.

13. Brother of the complainant of course was an important witness, but before the trial could commence, he expired and, therefore, his evidence was not available, but it is in the evidence of the complainant that brother of the complainant i.e. Dholabhai was not even aware about the trap arranged by the complainant. On the contrary, the version of the complainant as well as panch No.1 clearly indicates that all six muddamal currency notes were taken out and that too on insistence of the demand made earlier. There was no reason for the ld. Trial Judge to disbelieve the complainant and panch that initially Rs.500/ were given to accused No.1 and Rs.100/ was kept away so that the same can be kept by accused No.1. There is no conflict in the evidence of these two witnesses that accused No.2 had uttered that “at present accused No.1 should keep the amount with him”. Utterance of these words by accused No.2 and initial conduct immediately prior thereto of separating six currency notes into two parts viz five notes on one hand and one single currency note on the other, is sufficient to establish one fact that Rs.600/ were demanded by accused No.1 from the complainant. The Court is conscious that a conjecture should not be given a shape of a reasonable inference, but when the amount of Rs.600/ is near to 10% of the total amount of compensation that was otherwise payable to the complainant and accused No.1 was to discharge a function

of identifying the complainant in the office of Deputy Collector (Land Acquisition), accused No.1 may have thought that he shall keep Rs.100/ and Rs.500/ shall be given to accused No.2. I am not impressed with the arguments advanced on behalf of the accused that the complainant has not bracketed the amount accused-wise while at the time of dictating the complaint. For the sake of arguments even if it is accepted that the complainant must be aware about the division of payable amount of bribe among both the accused, even then it was not required for him to state these details in the complaint. His grievance before the Police Inspector, ACB was that he was being asked to pay a bribe amount of Rs.600/ and he is under great compulsion. The accused in the present case, have been found by the ld. Trial Judge to be the persons trying to extort money. The ld. Trial Judge has discussed about the compulsion that was put on the complainant by discussing the evidence and the conduct of accused Nos. 1 & 2 both. The ld. Trial Judge has given a certificate to the complainant and has observed that the complainant in the present case can not be said to an accomplice (page Nos.445-450 & 451 of the paper book). The discussion as to the facts and arguments advanced in this regard by the ld. Trial Judge is found sound and logical.

One of the defence of the accused No.1 is that

version of the prosecution as to initial demand of Rs.600/ should not be accepted as reliable piece of evidence because on given date, accused No.1 was not available in the village. Accused No.1 has produced the documents in support of this contention, but the ld. Trial Judge has appreciated TA/DA Bill produced which shows that even as per the accused, he had left at about 9.30 a.m. his village and he was back in the Head Quarters at 5.30 evening and the conversation that has taken place between the accused and complainant was not thread-bare detailed discussion. The details as to demand of bribe given by the complainant in his complaint as well as before the Court appears to be very short and limited and the complainant has not stated any exact time of conversation. So, the discussion made by the ld. Trial Judge in this regard is a reasonable and logical otherwise the defence counsel could have asked the question that when and at what point of time alleged demand of Rs.600/ was made. It is the experience that time of departure and return of the government employee in Head Quarters while preparing TA/DA Bills are not so exact and variance of an hour or two is not impossible. So, I am in agreement with the finding recorded by the ld. Trial Judge in this regard.

14. The complainant was illiterate man. So, it was not possible for the complainant to narrate the details

sequence-wise. It is possible for a illiterate farmer and that too under a pressure of circumstances and atmosphere of the Court, that he may need some part of story that he could narrate. So, the omissions or conflicts that are not of vital nature should be ignored. In the present case, it is seriously disputed by accused No.2 that there is no evidence on record to show that he had ever demanded bribe from the complainant. Of course, certain averments have been made by the complainant in the complaint, but these averments have not been proved by the complainant. These arguments are legal. The each fact of the complaint is required to be proved by the author of the complaint otherwise that part of the complaint can not be held as substantive piece of evidence. When the complainant himself has not stated anything about the meeting that had taken place between him and accused Nos. 1 & 2 in the office of accused No.2 before giving a complaint at ACB Police Station, it can not be said that there is no direct evidence of demand of bribe by accused No.2 as alleged in the complaint. This is not a case of no evidence as to demand by accused No.2. It has come on record that prior to 23.04.1985, the complainant had been to the office of accused No.2 twice. So, certain facts that have not been found proved as the complainant had himself to state the details of the complaint about the demand of bribe by accused No.2, would not make the case of the prosecution doubtful qua accused No.2 so far

as the demand of bribe is concerned. During certain cross-examination, the complainant has stood to the test about the number of visits paid by him in the office of accused No.2 and it was not even suggested that accused No.2 was not found present in the office when he had gone to the office of accused No.2 with accused No.1. It has also come on record that all visits of the complainant was for the amount of compensation payable to him. The evidence against accused No.2 was required to be appreciated because he is the person who had uttered the words addressing accused No.1 that at present he viz. accused No.1 should keep the amount with him. How a Talati otherwise would dare to accept any amount from the complainant in the office of Deputy Collector and that too in the presence of Deputy Mamlatdar ? There was no reason otherwise for accused No.1 to go to accused No.2 with revenue record of village Sherpur and mainly village form Nos.7/12 & 8A. It is true that those documents were not seized in original by the trapping officer. As per PW.4 Mr. Gurjar, Sherpur cases were to be handled by accused No.2 and Talati- Village Secretary has to prepare and supply copies of village form No.7/12 & village form No.6. It is clearly mentioned in the panchanama as well as in the deposition of PW 2 & PW 3 PI Mr. Parmar that cotton bag popularly known as ”theli” was with accused No.1 and in that cotton bag, revenue record of village Sherpur was there and there were blank forms of village

form No.7/12 and in those books, entries in the name of the complainant were there and accused No.1 was permitted to retain that record. Mr. Parmar has admitted in his deposition that no endorsements were made in that revenue record of village Sherupr nor any signatures were obtained of a panch. It is attempted to represent that there was no record as such with Talati-accused No.1, but the consistency in the evidence of the complainant, panch and PI Mr. Parmar satisfactorily establishes that record was there with accused No.1. Ultimate seizure of village revenue record was not a matter of that importance. Accused No.1 being a secretary of village, could have explained that mere presence of such record in the cotton bag would not become a circumstance incriminating against him. Trapping Officer was to satisfy himself prima facie that the contents of the complaint are genuine. Independent witness like panch would not have supported any such falsity. It is settled that panch witness is not a trap witness and his presence as panch No.1 was not incidental. There is nothing on record to show, unless it can be inferred, that the panch supports the version of the complainant and PI Mr. Parmar and so also the contents of panchanama on this point though there was no such revenue record available at the place of raid. But, non-availability of revenue record would not have gone to the root of the case. The prosecution was supposed to prove that

accused Nos. 1 & 2 had intended to extort money before handing over the cheque of the amount of compensation to the complainant and his brother or by making such pretend. The case of the complainant is that he was asked to pay Rs.600/ if he really wants the amount of compensation to be paid to him earlier. Even for the sake of arguments it is accepted that there was no grant and it was not possible to pay the amount to the complainant, then the case against both the accused would become more worst. In that situation, the backbone of the case of the prosecution would remain the same and the accused could have been held guilty for accepting the amount of illegal gratification by misusing their position in the office as government servants. It was not impossible for both the accused to make the complainant quiet after handing over the cheque after receipt of the amount of grant from the government. There is consistency in evidence of the prosecution that the complainant was insisting for a cheque and the amount of compensation immediately as and when he passes the muddamal currency notes to the accused persons so they can be exposed before the trapping officer. There was no reason to discuss inter-se either with the complainant or with accused No.1 whereby it can be conveyed to the complainant that he would get the cheque after a week and not on that very day. Conversation as to handing over of cheque after a week affects badly the defence theory that was placed

before the Court. On the contrary, this part of evidence makes the case of demand of bribe stronger. Only books of accounts of the office of PW.4 can prove whether any amount that can be paid to the farmers who have readily agreed to hand over the possession of their respective land under a consent award, was available or not. As per the scheme of the LA Act, the amount of compensation is to be paid firstly to the farmers in whose favour the award is drawn and that too under settlement. It is not even the defence that no farmers were paid the amount of compensation under Guhai Irrigation Scheme whose lands were to submerge in the said irrigation scheme. The location of the land is relevant only if the land acquiring authority has got published the notification under section 6 of the LA Act or where formalities under section 9 of the LA Act are required to be undertaken. Here, the amount was already settled and Schedule-G was also prepared way back in the month of April-1984 and the award allegedly passed in the year 1986 speaks for the same amount. Further, Form: G produced in the present case is nothing but a schedule attached with the award. Form:G is not prescribed under any Rules, but it is certain from the details reflected in Form:G that the same is prepared and can be prepared only after drafting out the entire award which obviously would be in the nature of a judgment by a quasi-judicial authority. So, it would not be either legal or proper to say for this

Court that no award was made qua the lands of village Sherpur including the lands of the complainant. Both these documents i.e. award as well as Form:G bears signature of the authorized Land Acq.Officer also. So also, the availability or non-availability of the grant does not appear to be a point of much relevance and the ld. Trial Judge has rightly concentrated on the ideas and intention of the accused persons in extorting money from the complainant any time prior to handing over the cheque amount of compensation.

15. There is no strength in the arguments advanced on behalf of the accused that the complainant was guilty and was intending to pocket the amount of compensation and, therefore, he had offered the bribe amount otherwise the authority was supposed to send the entire amount of compensation to Land Mortgage Bank, but there is enough force in the arguments advanced by ld. APP Ms. Pandit that a big chunk of the land was under mortgage and demand notices were sent in the year 1982, but no steps of auctioning the lands were seriously initiated by the Land Mortgage Bank. It appears that on proclamation of notification under section 4 of the LA Act, Land Mortgage Bank might have decided to issue notice to the farmers. Complainant was a debtor below Rs.10,000/ even as per the notice of demand and otherwise to retain the land of more than 14 Acres with him. Remaining land of the

complainant obviously was to get advantage of dam irrigation scheme in repaying the amount. It is claimed by the complainant that initially Rs.21000/ were taken as loan, but the same was paid back. There is nothing on record to show that the charge over the land was of Land Mortgage Bank and of none else. So, it was not impossible for the accused persons to hand over the cheque to the complainant by recording reasons regarding the part of the land acquired. If the entire amount was to be sent to Land Mortgage Bank directly, in reality, then there was no reason for accused Nos. 1 & 2 to tempt the accused to part with the amount of Rs.600/. On the contrary, an impression created in the mind of the Court is that the act of sending the amount directly to the Land Mortgage Bank in the year 1986 or thereafter, is nothing but an attempt of the department to help the defence plea if it works. The accused could have produced the list of hundreds of farmers affected by Guhai Irrigation Scheme showing that the amounts to be paid to all such farmers otherwise payable to the Land Mortgage Bank because of debt, were sent directly to the Land Mortgage Bank and none out of such farmers has been paid the amount of compensation directly without making full payment to the Land Mortgage Bank. When PW 4 has been examined at the instance of the accused side, he could have been called with such relevant record or the accused could have insisted for production of such documents. Version of

PW.4 Mr. Gurjar simply provides for a small room to develop a defence theory, but the Court should not forget that the place where the amount of bribe has been accepted in the present case is also a small room and both the accused persons have described the events in their own way. On the contrary, the description of the event occurred prior to the actual infliction of raid given by the complainant, panch witness and accused itself makes the say of key prosecution witnesses more reliable.

16. The Court has assigned good reasons for accepting the version of the panch witness and these reasons assigned are at page Nos. 453, 458, 459 to 463 of the paper-book. No informal attachment or relations between the Trapping Officer or panch or panch and the complainant has emerged. The panch was with the complainant all through-out from the place where the accused No.1 came out from the post office. National Saving Certificates were purchased on that very day, but the certificate exh.64 clearly shows that the same was issued on 23.04.1985. It may be against the encashment of such earlier certificate or the payment of cash amount. The ld. Trial Judge has made improper and non-convincing comments and has shown doubt on the integrity of accused No.1 as he had purchased NSC on that day. The purchase of such certificate would not help the prosecution at all. It may

be innocent purchase and a government servant if regularly saves the amount, can purchase NSC of Rs.5000/ and no wrong assumption was required to be drawn against accused No.1. This part of the judgment neither sounds legal nor logical, but this is not an error which can be said to be fatal to the prosecution and it would not be safe for the Court to jump to the conclusion that the ld. Special Judge perhaps had pre-judged the issue on such extraneous circumstances. The ld. Trial Judge has described the location where accused No.1 was sitting and location of the table of accused No.2. It is also proved beyond doubt that panch No.1 had occupied chair from where he was able to see the transaction. It is true that panch No.1 had not followed the instructions given by Mr. Parmar otherwise he would have remained with complainant only and stood nearby the complainant, but as the room where the accused No.2 is sitting is a very small room and his table is located just away from one of the opening doors of the room. So. if the panch finds convenient to visualize the event and listen the conversation from any place or angle, he can select such place or location and it can not be said that he had kept himself away from the place of trap and was not able to see or listen anything. This witness has stood to the test of cross-examination so far as his presence in the very near vicinity of the table of accused No.2 is concerned and he has denied that it was not possible for

him to see or listen anything that was happening at the table of accused No.2. There is no total conflict at all in the version of the complainant and panch No.1 and, therefore, the ld. Trial Judge has accepted the prosecution case as a case successfully proved beyond doubt.

17. For the sake of arguments even if it is accepted that there was no award and only draft award was prepared, then, accused Nos. 1 & 2, both can be said to have tried to defraud the complainant tempting him for payment of amount of compensation for the land under acquisition from his Khata (village form No.8/A) and to pocket the money abusing their official status. So, in both the situation, the conduct of the accused persons looks like the conduct of a guilty person. The date of payment of the amount to the Bank is a statement of fact, but considering the document which is Khata (village form No.8/A), it was otherwise possible for the Land Mortgage Bank to recover the debt from other parcels of land. It was not impossible for the government machinery to part with money to the complainant as the entire parcel of land, owned and occupied mentioned in Khata were not under acquisition.

18. There is formal discussion of the evidence as to application of anthracene powder on currency notes before

drawing initial part of panchanama and so also the detection of anthracene powder marks under ultra-violet lamp on both the hands of the accused. Merely because, no examination with the help of ultra-violet lamp is carried out at the table of accused No.2, would not affect adversely the case of the prosecution because the recovery of muddamal currency notes has been found proved in the present case from the hands of accused No.1. Panch No.1 was able to visualize the act of accused No.1 of accepting the muddamal currency notes. He has also narrated that out of six notes, five were tendered for payment to accused NO.2 and one was kept by accused No.1 for himself and at that time, accused No.2 uttered the words referred to earlier in this judgment. The acceptance of illegal gratification of bribe may not be, in all cases, a physical or formal acceptance. In the present case, accused No.1 had accepted the amount physically and the absence of muddamal currency notes is also found proved by evidence, oral version of the complainant as well as panch No.1 and also by examination with the help of ultra-violate lamp. This acceptance was under an agreement and/or under an earlier understanding. Talati was the person accused who had accepted the amount physically as well as under a particular mental state of mind. So far as accused No.2 is concerned, he has not specifically accepted the muddamal currency notes, but asking accused No.1 to keep the amount for the time being

or as suggested by him, also makes him a recepeant of the bribe amount. Moment on which accused No.2 uttered those words, accused No.1 was simply a retainer of the amount on behalf of the accused No.2. The evidence of prosecution thus is sufficient to draw a legal, logical and reasonable inference that accused No.2 had mentally accepted the bribe amount under an agreement or understanding. It was possible for accused No.2 to accept that amount openly in his office from accused No.1, but any other conduct if is consistent with the case of the prosecution and the prosecution has established that fact by leading convincing evidence, then physical non-acceptance of the amount would not put the accused No.2 in any other compartment or ladder then accused No.1. It is not the law that presumption under section 4 of the Act can be raised only against the person who is found in actual possession of the bribe amount or whose hands are found stained with anthracene powder and/or phenolphthalein powder. It is not necessary to quote the scheme of section 4 of the Act (Prevention of Corruption Act) for raising presumption against the accused. Both the accused have attempted to say in their respective statements under section 313 of CrPC that the complainant tried to hand over or give bribe money initially to accused No.2 and thereafter he forcibly put those notes in the hands of accused No.1 and during that process, the accused No.1 had pushed the hands of the complainant back

and notes had fallen down. As the push was given by both the hands, anthracene powder might have touched both the hands of the accused No.1. This is a probability which both the accused have tried to place before the Court, but as discussed earlier and in view of the finding recorded by the ld. Trial Judge, this explanation does not appear to be convincing or even probable. The prosecution has proved its case consistently by narrating the details of sequence of events that had occurred immediately prior to the raid carried out by PI Mr. Parmar on receiving signal from the complainant. One of the member of the raiding party was standing near the door of the office room where the incident had occurred, but non-examination of this member of the raiding party would not affect the case of the prosecution because the prosecutor may decide not to lead evidence which can be otherwise termed as duplication. It is not the case of the prosecution otherwise that very member was able to listen the conversation between the present accused and the complainant. It is true that the complainant has not led any evidence that accused No.2 had demanded bribe on a given date and time. The prosecution has missed in stating that fact, but for the purpose of raising presumption, the prosecution is entitled to establish through circumstances that the amount was accepted under demand made earlier. It is observed in more than one cases that the acceptance of illegal gratification if

found proved beyond doubt and there is no scope to justify such acceptance and the court is able to record a finding that this is not a case of mere recovery of bribe amount, then element of hidden demand can be said to have been proved. Ratio of various decisions in this regard has now given a crystallized shape to the legal position in this regard. It is possible for the court to infer that the complainant had visited office of accused No.2 for the first time on 23.04.1985 otherwise he would not have narrated any details qua accused No.2 at the time of giving complaint. It is true that accused in a criminal case can take conflicting defence and is also entitled to show more than one probabilities even conflicting to each other. The Court is able to find that out of conflicting defences, any one or certain probabilities posed by accused look sufficient and capable of rebutting presumption, then the accused has to be given advantage thereof. But here in the present case, the defence pleaded by the accused persons is found not only illogical, but false. The ld. Trial Judge has also discussed one more defence plea taken by the accused regarding conflict between Patel & Harijan communities, but the documents produced in support of this defence plea have not been found sufficient to accept that plea. In para-16 of the judgment, the ld. Trial Judge has observed in this regard. There is no substance in the defence that accused No.1 had made report against the

complainant alleging that he has made encroachment on government land, but on close reading of the documents, it emerges that the complainant was on receiving end and his grievance was that somebody has encroached upon his land and so-called dispute had no relevance otherwise accused No.1 could have produced the papers of encroachment proceedings initiated by the Mamlatdar as also the map showing the area of encroachment. It was even possible for the accused to establish that fact by getting the land of the complainant measured. In the same way, ld. Trial Judge has also appreciated one more defence plea taken by the accused showing Harijan and Patel communities were two waring groups in the village and accused No.1 being Harijan, has been victimized. It is observed that the documents produced by the accused show certain disputes between the individuals belonging to these two castes and some are showing disputes between the group of individuals, but the accused have not been able to lay a finger at any particular instance whereby it can be even inferred that the complainant or his brother Dholabhai were interested or concerned with the same. Further, accused No. 2 was neither the resident of the village nor Harijan by caste. Only with a view to implicate accused No.1 being Harijan by caste, whether the complainant would involve innocent officer belonging to third community and has no concern with the village politics, is a question. So, it appears that the ld.

Trial Judge has not committed any error in appreciating the plea of defence raised by the accused. If the complainant was not to receive any amount and the amount was to be credited in the debt account of Land Mortgage Bank, then there was no reason for accused No.2 to utter the words that the complainant would get the cheque after 8 days. Either, he was cheating or misleading the complainant or was taking interest in handing over the cheque to the complainant irrespective of the Bank debt. It is not possible for the Court to say that evidence in this regard during the course of trial is untrustworthy. In the background of the totality, the ld. Trial Judge has recorded a finding of conviction for both the accused. It is not possible for the Court to accept the arguments of ld. Counsel Mr. Anandijwala for accused No.2 that no presumption could have been drawn against accused No.2 in the present case and he was not under an obligation to rebut the same as bribe amount was not accepted by him.

19. The ratio in the decision of the Apex Court in the case of Gulam Mahmood A.Malek (supra) would not help the accused because the facts of the cited decision are materially different. The Apex Court was dealing with the judgment of the Gujarat High Court where the Gujarat High Court had held the accused guilty by reversing the judgment and order of acquittal recorded by the trial Court. The allegation against the accused was that he had

accepted illegal gratification as Bench Clerk in the Court room and no independent witness though was present in the Court, was examined. Para-6 of the cited decision is most relevant which reads thus:-

> “6. In appreciating the evidence in this case the background should not be forgotten. The complaint was prepared by Natverlal who was accused in at least four cases. He did not have the least compunction in saying that he used to given money to the accused on several occasions. His case that he gave a bribe on 7-7-72 was rejected. His complaint that bribe was demanded on 7-7-72 was lodged only on 17-7-72. Apart from the fact that the complainant is in the nature of an accomplice, his story prima facie is suspect. Before any court could act on his testimony, corroboration in material particulars is necessary. The prosecution relies only on the evidence of Kirti Kumar, the pench witness for corroboration. Kirti Kumar is a student and employed in the office of Tube Well Maintenance Department which is in the same building as that of the Anti-Corruption Department. No doubt, there is no evidence that he is inimically disposed against the accused but he admitted that though his office usually starts at 10.30 A. M. he came to his office on that date at 8.45 A. M. and joined the party who conducted the raid. Though the

panch witness corroborates the complainant, regarding the recovery, the delay in effecting the recovery of the money, the failure to examine independent witnesses who were admittedly in the court hall and in the next room to which the accused was taken, and the recovery made, makes the entire prosecution case unacceptable.

The details reflected in the above paragraph distinguishes the present case from the case of Gulam Mahmood. So, these arguments are also not found acceptable.

20. It is true that Talati was not the authority to get the amount released or paid, but the evidence reveals that he was a key person and link between disbursing authority and land-loosers and he had an opportunity to exploit his position in the office as public servant. No document has been produced to show that any notice of recovery of the amount of Land Mortgage Bank was served to the complainant through accused No.1 in the month of April-1985 when the trap was laid. So, it is difficult to accept the argument that the complainant was suspecting that he may not be paid compensation of the land acquired and the same shall be credited and paid directly to the Land Mortgage Bank and, therefore, he was pressurizing the accused persons to get the payment out

of turn and in violation of the government guidelines. As discussed earlier, this also is not found sufficient to raise any doubt against the complainant. For short, the finding of the guilt of both the accused recorded by the ld. Trial Judge is found absolutely legal and in accordance witih law. The ld. Trial Judge has appreciated various decisions cited. I do not find any error of material nature in appreciating the evidence by the ld. Trial Judge. The appeal, therefore, requires to be dismissed so far as the order of conviction recorded against both the accused persons are concerned.

21. It is alternatively submitted that as there was no minimum punishment prescribed under the Old Prevention of Corruption Act, the ld. Trial Judge could have imposed minimum punishment and, therefore, substantive sentence imposed by the trial Court should be reduced. The submission made by the ld. Counsel appearing for the appellants accused for reduction in sentence, has some force. In the present case, the accused are found guilty of exploiting the land-loosers who were to get petty amount of compensation of Rs.6501.59 ps. The amount demanded by the accused persons is about 10% of the total amount of compensation. The government, in land acquisition matters, is paying less in compliance with the award declared by the authority and also at the end of reference application made under section 18 of the LA

Act. In some cases, the punishment for a period of 1 month has been imposed by the Courts, but in the present case, both the accused should be asked to undergo imprisonment for a period more than that, is a question. The accused are facing agony and mental tress since years. They must have been terminated from service on account of the conviction recorded by the trial Court way back in the year 1991 and for the offence punishable under section 5(1)(a) R/w section 5(2) of the Prevention of Corruption Act (Old Act), no minimum punishment was prescribed. So, to some extent, the period of substantive sentence can be reduced. I am of the view that if substantive sentence is reduced to that of R/I for 2 months for the offences for which the appellants accused are convicted, would meet the ends of justice. However, sentence of fine awarded in respect of the aforesaid offences also requires to be confirmed as the amount of fine has already been paid. The Court can not ignore one aspect that ultimately the incident is of 1985 and the accused were chargesheeted by police in the year 1987. After 20 years, sentence of R/I for 2 months would positively give message of deterrence to the society.

22. In the result, the present Criminal Appeal is partly allowed. The impugned judgment and order of sentence passed against the appellant accused for the offence punishable under section 161 of Indian Penal Code as well

as for the offences punishable under sections 5(i)(d) R/w section 5(2) of the Prevention of Corruption Act (Old Act) is hereby confirmed. However, the order of substantive sentence imposed in respect of aforesaid offences is hereby reduced. So far as the offence punishable under section 161 of the Indian Penal code is concerned, instead of the substantive sentence to undergo R/I for 1 year imposed by the ld. Trial Judge, the appellants accused now shall undergo reduced punishment of R/I for 2 months for the said offence. Similarly,so far as the offence punishable under section 5(i)(a) R/w Section 5(2) of the Prevention of Corruption Act (Old Act) is concerned, instead of the substantive sentence to undergo R/I for 2 years imposed for the said offence, the appellants accused now shall undergo reduced punishment of R/I for 2 months for the said offence. Sentence of Fine imposed in respect of aforesaid each offence, is hereby confirmed. Substantive sentences imposed shall run concurrently.

23. The appellants accused was on bail pending trial and at present also the appellants accused are enjoying bail in view of the order passed by this Court on 24.04.1991 and, therefore, appellants accused should be given some reasonable time to surrender. The appellants accused, therefore, are directed to surrender themselves within eight (8) weeks from the date of this judgment

before the trial Court to serve out the sentence, failing which the trial Court shall issue Non-Bailable Warrant to secure the presence of the accused so that they can be sent to jail to serve the sentence. Bail Bonds of the accused stand discharged/cancelled on conclusion.

[C.K. BUCH,J]

*rawal